



Canada-United States Law Journal

Volume 22 | Issue

Article 35

January 1996

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Recommended Citation

Mary Cornish, *Employment and Pay Equity in Canada--Success Brings Both Attacks and New Initiatives*, 22 Can.-U.S. L.J. 265 (1996)
Available at: <https://scholarlycommons.law.case.edu/cuslj/vol22/iss/35>

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EMPLOYMENT AND PAY EQUITY IN CANADA - SUCCESS BRINGS BOTH ATTACKS AND NEW INITIATIVES

*Mary Cornish**

I. INTRODUCTION

THE PROFILE OF CANADA'S WORKFORCE is changing. Many young aboriginal people are entering the workforce; more women than ever before are working outside the home; people with disabilities are claiming their right to participate fully in employment; the population is becoming more racially and culturally diverse. All of these changes are being reflected in organizations' customer and client base and in the electorate.

In Canada, the wage gap between men and women is increasing. Women now earn 69.8% than that of what men earn which is down from 72%. Women, racial minorities, aboriginal peoples, and persons with disabilities are all disadvantaged in employment opportunities although they experience such disadvantage differently. Such disadvantages include:

- higher rates of unemployment than other people;
- more discrimination in finding and retaining jobs and in being promoted;
- despite being qualified, they are often being overlooked or denied opportunities because of discrimination;
- they are underrepresented in most areas of employment, especially in senior and management positions;
- they are overrepresented in areas of employment that provide low pay and little chance for advancement.

To remain competitive in today's changing and global economic environment, organizations must now draw on a wider and more diverse pool of skills and experience. Canada's pay and employment equity laws not only provide access to fundamental economic justice, but also provide a tool to help businesses and public sector organizations adapt to these changes.

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II. CANADIAN EQUITY LAWS

Canada has played a leading role in implementing progressive and pro-active employment and pay equity laws aimed at effectively redressing the substantial inequalities facing women, racial minorities, persons with disabilities, and aboriginal peoples. These laws have been enacted at both the federal and provincial jurisdictions after many years of lobbying by coalitions of trade unions and community groups.¹

The Supreme Court of Canada, in interpreting human rights legislation, made a number of rulings that had a significant impact on the future of pay equity legislation. The first major ruling was that discrimination is primarily systemic and unintentional and includes employment policies and practices which may appear neutral, but which disproportionately impact on disadvantaged groups such as women.² The Court also decided that human rights laws are special laws which are next in importance to the constitution³ and must be practically enforceable so that discrimination can be identified and eliminated.⁴ Finally, the Court found that special measures or an employment equity plan which included hiring goals are reasonable and necessary positive

¹ For Canadian Pay Equity Legislation see:

Federal: *Canadian Human Rights Act* (CHRA), R.S.C. 1985, c.H-6, as amended by R.S.C. 1985 (1st Supp.) C. 31, Part IV, (ss.6-68); 1986, c.40, Schedule, s.3, section 11 (applies to public and private sector)

Provinces and Territories

Alberta: None.

British Columbia: None. Government committed itself to a negotiated pay equity process for government workers only.

Manitoba: *Pay Equity Act*, C.C.S.M. c.P-13, (applies to the public sector)

New Brunswick: *Pay Equity Act*, S.N.B. 1989, c.P-5.01. (applies to most of the public sector)

Nova Scotia: *Pay Equity Act*, R.S.N.S. 1989, c.337. (applies to public sector only)

Newfoundland, None. Government committed itself to a negotiated pay equity process for government workers only and reached an agreement in 1988.

Ontario: *Pay Equity Act*, R.S.O. 1990, c.P.7. as amended by S.O. 1993, c.4 and 1996, c.1, Schedule J (applies to the public and private sector.)

P.E.I.: *Pay Equity Act*, R.S.P.E.I. 1988, c.P-2. amended by R.S.P.E.I. 1995, c.28 (applies to the public sector)

Quebec: *Charter of Human Rights and Freedoms*, R. S.Q. 1977, s. 19. Quebec has introduced Bill 35, *Loi Sur l'equite salariale* (Pay Equity Act) to establish separate proactive pay equity legislation covering the public and private sector which has not yet passed.

Saskatchewan: None.

Yukon: *Yukon Human Rights Act*, 1987 (applies to public sector)

Northwest Territories, Public Service is complying with federal C.H.R.A.

² See *Robichaud v. Canada* (Treasury Board) (1987) 2 S.C.R. 84 at 90. See also *Re: Ontario Human Rights Commission v. Simpson Sears Ltd.* (O'Malley), [1985] 2 S.C.R. 547.

³ See *Heerspink* 3 C.H.R.R. D/1163 at D/1166. See also *Action Travail des Femmes v. C.N. R. Co* (1987) 1 S.C.R. 1114.

⁴ As noted by Mr. Justice Dickson in *Action Travail des Femmes*, *id.*

measures to remedy systemic discrimination.⁵

Canada's Supreme Court has ruled that the *Canadian Human Rights Act* which contains the federal equal value law:

[I]s not aimed at determining fault or punishing conduct. It is remedial. Its aim is to identify and eliminate discrimination. If this is to be done, then the remedies must be effective, consistent with the "almost constitutional" nature of the rights protected. . . . [The adjudicator must be able] to strike at the heart of the problem, to prevent its reoccurrence, to require that steps be taken to enhance the work environment.⁶

This focus on the systemic and unintentional nature of discrimination and the pro-active nature of a results-based response has profoundly influenced the Canadian approach to equity issues. Canadian legislation avoids any reference to "intention" and instead is focused on identifying whether the effect of practices is discriminatory even if such effect is unforeseen.⁷

On the basis of these rulings and armed with evidence of the limitations related to past complaint-based legislation, women's groups in several provinces successfully demanded pro-active laws. Laws such as Ontario's *Pay Equity Act* and Ontario's *Employment Equity Act, 1993* (now repealed) are seen as particularly effective because of the comprehensiveness of the model which combines legislative, collective bargaining, adjudicative, and enforcement mechanisms to arrive at an effective equity result. This model has been recently adopted by Canada's Federal Government which passed a proactive *Employment Equity Act* in December, 1995.

The main thrust of Canada's proactive equity laws has been to require employers and trade unions to jointly take pro-active steps to identify and redress systemic discrimination in recruitment, treatment, compensation, promotion, and retention of employees who have been historically disadvantaged in the workplace. These laws start from the premise that there is widespread discrimination against such disadvantaged groups which has not been effectively redressed by complaint-based human rights legislation. The law sets workplace parties on the task of first identifying how such discrimination may be operating in a particular workplace and then planning the steps necessary to make reasonable progress in removing the discrimination. Women's groups and unions argued that a systemic problem required a systemic solution, not a system which relied only on complaints being lodged by the

⁵ See *id.* See also Mary Cornish & Harriet Simand, *Religious Accommodation in the Workplace*, CLEJ; Shirish Prindit Chotalia *Human Rights Law in Canada*, at 6-8, 50-54 (1995).

⁶ *Robichaud v. Canada (Treasury Board)*, *supra* note 2.

⁷ *Action Travail des Femmes*, *supra* note 3; JUDITH KEENE, *HUMAN RIGHTS IN ONTARIO*, 8-10 (1992).

most vulnerable members of the workforce.

III. INTERNATIONAL OBLIGATIONS

These laws are consistent with Canada's international obligations under ILO Convention 100 on Equal Remuneration, the ILO Discrimination (Employment and Occupation) Convention 111, the International Convention on the Elimination of All Forms of Racial Discrimination, the U.N. Convention on the Elimination of all Forms of Discrimination Against Women, and the recent Beijing Declaration of the Fourth World U.N. Conference on Women. These international obligations are centred on the importance of governments' devising and implementing effective legislation and special positive measures to ensure disadvantaged groups are given access to their equality rights.⁸

As stated in the Beijing Declaration:

The advancement of women and the achievement of equality between men and women are a matter of human rights and a condition for social justice and should not be seen in isolation as a women's issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic, cultural and environmental security among peoples.⁹

Most importantly, the specific steps of closing the wage gap and strengthening laws to provide and enforce these rights were agreed upon by world governments, including Canada, as one of the United Nation's priorities if equality for women is to be achieved.¹⁰

IV. PAY EQUITY LAWS

Canada's pay equity laws all apply to the public sector and almost all also apply to the broader public sector and crown corporations. Legislation in Ontario, Quebec and in the federal jurisdiction applies to much of the private sector as well. Most require comparisons between

⁸ *Setting the Stage for the Next Century: The Federal Plan for Gender Equality: Government of Canada, Status of Women*, at 6-7, Aug. 1995.

⁹ *Beijing Declaration Report of the Fourth World U.N. Conference on Women*, (Beijing, 4-15 Sept. 1995), Chpt III, ¶ 41

¹⁰ The Conference Report recommends in paragraph 178 that: "Governments, employers, employees, trade unions, and women's organizations:

(h) Recognize collective bargaining as a right and as an important mechanism for eliminating wage inequality for women and to improve working conditions;. . .

(k) Increase efforts to close the gap between women's and men's pay, take steps to implement the principle of equal remuneration for equal work of equal value by strengthening legislation, including compliance with international labour laws and standards, and encourage job evaluation schemes with gender-neutral criteria;. . .

(l) Establish and/or strengthen mechanisms to adjudicate matters relating to wage discrimination."

male- and female-dominated occupations defined as those in which one sex holds either sixty or seventy percent of the jobs. All define value in terms of skill, effort, responsibility, and working conditions. In several jurisdictions, the method of comparison is not prescribed, although the call for job comparisons that are free of gender bias is found in several jurisdictions.

Pro-active pay equity laws have led to significant gains for women in both the public and private sectors. In Ontario, pay equity has been achieved for some, but not nearly all women, and they are mostly unionized workers. For example, a group of secondary school secretaries received an annual increase of \$7,680 when their work was deemed equal to that performed by audio-visual technicians. A group of female caretakers (formerly called matrons) was successfully compared to male caretakers and they received an increase of \$2.96 an hour. Another group of health technicians ended up with wages that are the same as transportation workers, and in the process they increased their hourly rate by \$2.79 an hour.¹¹ In a hospital, the female job of mental health worker was compared to the male personnel officer's job, resulting in a pay equity raise of \$2.20 per hour. In an urban police force, the female dispatchers were compared to the radio technical supervisors, and they received an increase of \$7,179.00 annually. In a law firm, a female job class of law clerk was compared to the male job class of investigator, resulting in a \$4.28 per hour adjustment. At a baked goods manufacturer, the female job class of personnel manager was compared to the male job class of service manager, resulting in an adjustment of \$4.65 per hour.¹²

Canadian pay equity legislation is based on the assumption that the labour force is segregated in ways that once served to systematically undervalue women's work, and that neither the market nor employers would correct this inequity. It was designed to alter the value attached to such work by forcing employers, working with unions when they were present, to examine their pay practices and "to ensure the comparison system remedies the historical undervaluation of women's work." It is not intended to change what men and women do in the labour force, but rather to recognize and pay for the value of the work that was being done by women. While it addressed the systemic discrimination expressed in the wage rates women shared, it did nothing about the discrimination individual women faced in seeking other, usually more highly paid work. Employment equity, that is Canadian legislation requiring positive measures to ensure equality, is intended to do just that.

¹¹ These examples are taken from a newsletter on pay equity prepared by the Canadian Union of Public Employees in 1992. More systematic data is not available as the legislation did not require employers to file plans with the Pay Equity Commission.

¹² Information obtained from the Pay Equity Commission of Ontario.

V. EMPLOYMENT EQUITY/AFFIRMATIVE ACTION

In Canada, various human rights legislation at the federal and provincial/territorial level had prohibited sex discrimination in employment. But, like the earlier wage legislation, human rights legislation was complaint-based; it led to lengthy and costly cases, and often put the complainant at risk.¹³ And like the early equal work legislation, it did little to alter systemic discrimination. A 1984 Royal Commission on Equality in Employment established the continuing inequalities in the workplace and recommended employment equity legislation. Such a strategy was "designed to obliterate the present and the residual effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded. It requires a special blend of what is necessary, what is fair and what is workable."¹⁴

Only two governments introduced pro-active employment equity laws to protect the designated groups, namely women, persons with disabilities, racial minorities, and aboriginal peoples. The federal government was the first to enact such legislation. The 1986 Employment Equity Act required employers with a hundred or more employees "in connection with a federal work, undertaking or business" to prepare employment equity plans based on an audit of their current workforce and of the available workforce.¹⁵ A report had to be filed every year, indicating not only absolute numbers, but also salaries, hirings, promotions, and terminations of designated group members. There was a penalty for failing to file, but not for failing to achieve equity and there was no general complaint mechanism or standard for progress.

Ontario enacted much stronger legislation in 1994 with the Employment Equity Act, 1993, becoming the first province to extend employment equity to provincially regulated private sector employers.¹⁶ The law was particularly important in Ontario, given that estimates indicate over eighty percent of new entrants to the workforce will come from the four designated groups by the year 2001.¹⁷ Ontario's law gave unions the right to jointly negotiate employment equity plans with the employer. An independent Employment Equity Tribunal was given the

¹³ Mary Cornish, *Achieving Equality, Report of the Ontario Human Rights Code Review Task Force*, Ontario Ministry of Citizenship, 1992.

¹⁴ Judge Rosalie Silberman Abella, Commissioner, *Equality in Employment: A Royal Commission Report*. Vol. 1-2, Ottawa: Ministry of Supply and Services Canada, 1984.

¹⁵ Canada, Employment Equity Act, R.C.S. 1985, c.23, proclaimed in force December 12, 1988; as amended by S.C. 1993, c.28, Schedule 111, s.46, assented to June 10, 1993 p.14,175. This Act will remain in force until the new Employment Equity Act, S.C. 1995, c.44 is proclaimed.

¹⁶ Edward B. Harvey & John H. Blakely, *Employment Equity in Canada*, POL'Y OPTIONS, Mar., 1993.

¹⁷ Ontario Pay and Employment Equity Guide, CCH Canadian Limited, ¶ 60,027 Toronto, 1994.

power to review and assess the results of the employment equity plan and to order action if employers had not taken the appropriate steps for ensuring a more representative workforce.¹⁸

In December, 1995, just as Ontario's Employment Equity Act, 1993 was being repealed by a new Conservative government, the federal legislation was strengthened to require employers to make reasonable progress towards achieving a representative workforce by designing and implementing employment equity plans in consultation with their employees and any bargaining agent. The new federal Employment Equity Act will not be proclaimed until late 1996 when regulations and guidelines are expected to be released. Until that time, the 1986 Act remains in force. The new Act's purpose is clear:

to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of difference.¹⁹

Although somewhat weaker than Ontario's former legislation, federal employers under the new law, in collaboration with employees and unions where they exist, will now be required to conduct a workforce analysis to identify underrepresentation of designated groups, review employment systems, policies, and practices in order to identify employment barriers against the designated groups; prepare short and long-term plans with measures to remove employment barriers; positive policies and practices, and reasonable accommodation; numerical goals and timetables for hiring and promotion, to correct underrepresentation. The plans are to be enforced by the Canadian Human Rights Commission which has the power to audit and monitor compliance and the Employment Equity Review Tribunal which can order action by the employer.²⁰

Another similar initiative in Canada has been contract compliance laws. In 1985, the federal government implemented the Federal Contractors Program which required employers with 100 or more employees wishing to enter into contracts of \$200,000.00 or more to show that they are taking appropriate measures to maintain a fair and representative workforce. Federal contractors will now have to establish compli-

¹⁸ Mary Cornish, *Trade Union Guide to Carrying Out Joint Responsibilities Under the Employment Equity Act, 1993 and Its Regulations*, Ontario Federation of Labour, 1994.

¹⁹ Employment Equity Act, 1993 S.O. 1993 c.35, (now repealed).

²⁰ *Ontario Pay and Employment Equity Guide*, *supra* note 17, ¶ 20,501.

ance with the new federal employment equity legislation.²¹ Various provinces also have contract compliance laws as part of their human rights legislation. For example, in Ontario, it is deemed to be a condition of every contract, loan, or grant entered into with the provincial government that there will be no discrimination by the contractor, borrower, or grant recipient. The penalty for non-compliance is the cancellation of the contract, loan, or grant.²²

VI. GLOBALIZATION OF THE ECONOMY AND DISCRIMINATION

Although some new employment opportunities have opened up for women and racial minorities as a result of the globalization of the economy, globalization and free trade has also substantially exacerbated the existing inequalities. Lack of employment in the private sector and reduced jobs in the public sector have disproportionately affected women and racial minorities, among others, who have been driven into the informal economy where jobs are insecure and low-paying. Funding crises in the public sector have reduced women's access to day care, retraining, and other employment-enhancing strategies.

Indeed, the restructuring is having a profound and adverse impact on women. The ILO's Committee of Experts has expressed grave concern about the tendency of some countries to abandon or drastically reduce programmes intended to reduce inequalities in order to decrease public expenditure in the name of economic efficiency. The Committee has firmly stated that such developments should not interfere with programmes for providing equal access to jobs. A similar sentiment has been expressed in the Beijing Declaration which notes that equality in employment is not a luxury, but a prerequisite for a sustainable world economy.²³

VII. RECENT GOVERNMENT INITIATIVES

Depending on the political climate of the jurisdiction in Canada, governments are now moving to enact or expand pro-active equity laws or are retrenching from such initiatives by either repealing all or portions of such laws or withdrawing financial support from enforcement. Many businesses are calling for the repeal of restrictions of such laws.

For example, in Ontario, Canada's largest province, it was the New Democratic Party government, which enacted in September,

²¹ For a discussion of this Programme, see *Ontario Pay and Employment Equity Guide*, id. ¶¶ 35-000-35-050.

²² *Human Rights Code*, R.S.O. 1990, c.H.19, as amended by 1993, c.27; 1993, c.35., 1994, c.10, and 1994, c.66. For a discussion of the contract compliance, see JUDITH KEENE, *HUMAN RIGHTS IN ONTARIO*, (1992).

²³ See Report of Fourth World U.N. Conference, *supra* note 9, at ch. I, ¶ 36; chs. II & III, ¶¶ 9, 151-64.

1994, the Employment Equity Act, 1993 which had been a campaign promise when they came to power in 1990. This legislation was labeled by the right wing Progressive Conservative (Tory) Party as "reverse discrimination" having "unfair quotas." The law became a major election issue in the June, 1995, Ontario provincial election with the Conservatives promising to repeal the law. The Conservatives won power and by December, 1995, the law was gone.

Although not a focus of the election, this Tory government also quickly moved to repeal sections of Ontario's Pay Equity Act which required public sector agencies, such as nursing homes, to take special "proxy" measures to identify the wage gap for their female job classes who could not find male comparators because the workplace was predominantly female. The government has recently announced it will also legislate major changes to the Pay Equity Act to return to a complaint-based approach since it believes pay equity has been achieved and a pro-active phase is no longer necessary.

VIII. CAN WE AFFORD EQUITY?

Some governments, such as Ontario's, see that the economy cannot afford to be a leader on "equity" issues and that pay equity laws which have increased the real wages earned by "women's jobs" must be ended as a too costly frill. Employment equity laws are inaccurately labeled as interfering with an employer's ability to compete globally if they are required to hire or promote so-called "unmeritorious" candidates.

Disadvantaged groups are asked by such governments to sacrifice their right to economic justice for the sake of the "alleged" good of the economy as a whole. Given that little progress was made by disadvantaged groups during the "good economic times," there is considerable skepticism among the equality-seeking communities about this approach. Rather, such communities demand that the definition of "society's best interests" must be broadened from the profit interests of businesses to include the interests of the workers and disadvantaged workers as they define it. Disadvantaged groups are not prepared to accept a society which becomes collectively more prosperous at its own expense.

Theoretically, equity should be entirely consistent with a true market economy. Supply and demand should match up contribution and effort. If the market works freely, everyone should get what he deserves not what others perceive they are worth. Everyone should have an equal right to participate and not be excluded from the race altogether or kept in the lower paying jobs. Pay and employment laws are there to make the market actually do what it says it does - treat and pay all workers fairly.

IX. MULTI-FACETED APPROACH NEEDED

A multi-faceted approach is necessary to address the variety of factors contributing to women's low wages. These approaches included not only higher minimum wage laws and access to employment and promotion through employment equity laws, but also equal opportunity through services such as day care and health care, through limitations on harassment, through maternity leave, through legislation to encourage union organizing, and through benefits such as unemployment insurance, pensions, family allowance, and support for battered women.

X. REQUIREMENT FOR PRO-ACTIVE MEASURES

Canadian legislation has recognized the importance of setting up a comprehensive pro-active system to identify and eliminate discrimination against disadvantaged groups in the workplace without waiting for complaints.

Various models for Ontario's pay equity legislation were considered more than a decade ago. After examining the experiences of other jurisdictions, it was concluded that not many employers would voluntarily implement a program which stands to significantly increase labour costs as the discriminatory wage gap is narrowed. Moreover, legislation which depends on individual complaints being lodged by the most vulnerable members of the labour force was problematic. The individual complaint-driven systems of Ontario's Human Rights Code and Employment Standards Act were inadequate. It was recognized that wage discrimination is not an individual but a systemic problem which required a systemic solution. Accordingly, Ontario's 1987 Act recognized that effective enforcement of equality rights required a system of affirmative steps.

This approach recognized that pay and employment equity creates a substantial change in an organization which must be integrated into its business and/or service goals. A hallmark of pro-active laws is the combining of a human rights and human resource planning process to carry out the change more effectively and efficiently, allowing the parties to set priorities and meet legislated time frames and obligations.

XI. EMPLOYMENT EQUITY

Pay is directly linked to employment opportunities. In these times, it is especially important to ensure that employment equity legislation demands action on hiring, promotion, working conditions, and retention of staff. The Ontario experience suggests that some large employers have come to see the benefits of such action. The legislation needs to be redesigned to make it simpler for small businesses to comply. Equally important, more work needs to be done in explaining the needs and benefits of the scheme to counteract the backlash that has become in-

creasingly evident.

XII. STRONGER ORGANIZING LAWS

Pro-active Canadian legislation has generally identified an essential role to be played by trade unions in the achievement of equity in the workplace. This role varies from a co-management role in Ontario's Pay Equity Act where the unions jointly develop with the employer the equality measures and a consultative or collaborative role in the new Federal Employment Equity Act.

Collective bargaining and the laws which encourage and promote collective bargaining have played an important role in pay equity enforcement. Compared to non-organized workers, women union members have more job protection, earn more money, have a smaller wage gap from men, have better benefits, have healthier and safer workplaces, receive more training, and have an advocate for change and protections.²⁴ On average, a unionized woman's pay is \$3.09 per hour more than a non-union female employee. No other single step is likely to bring a more immediate and greater increase in pay.²⁵ A woman working full-time in Canada earned on average \$10.89 an hour if she did not belong to a union and \$13.98 if she did belong to a union. With twenty-nine percent of Canadian women working in clerical jobs, a clerical worker with a union to represent her interests earned \$110.00 per week more than her non-unionized counterpart. Unionized part-time workers earned \$5.60 per hour more than unorganized part-time workers.²⁶

Ontario's Equal Pay Coalition recognized that unionization was one of the most effective ways of quickly and substantially increasing the wages of women workers. As unionization is particularly difficult in the non-standard jobs held by most women workers, the Coalition called for more accessible organizing laws. Unions have pursued a number of different collective bargaining tools to reduce the wage gap, including bargaining for equalization of entry level rates for comparable male and female work, equalization of specific comparison groups, equalization of increment steps for male and female work, across the board wage settlements based on the same measure (rather than percentage increases), and bottom-end loading to add extra increases for lower paid workers.²⁷ Legislation on equal pay helped unions push these claims.

This approach is in line with international standards which stress the importance of collective bargaining. The ILO Committee of Ex-

²⁴ Mary Cornish & Lynn Spink, *ORGANIZING UNIONS*, Ch. 1, (1994).

²⁵ Mary Cornish, *Equal Pay: Collective Bargaining and the Law*, LAB. CAN., at 17.

²⁶ Mary Cornish, *ORGANIZING UNIONS*, *supra* note 24, at 45.

²⁷ Mary Cornish, *Equal Pay: Collective Bargaining and the Law*, *supra* note 25, at 23-30.

perts, who are responsible for enforcing these international standards have strongly endorsed the importance of reconciling and integrating labour and equality rights laws, labour legislation, and standards arrived at through collective bargaining between employers and unions and general anti-discrimination laws applied by specialized bodies and courts.²⁸

With respect to NAFTA, the NAALC's Preamble states that the signatories are jointly agreeing to "improve working conditions and living standards. . . ; pursue cooperative labour-related activities on the basis of mutual benefit; . . . (and) promote compliance and enforcement by each Party of its labour law." "Labour law" is defined to include equity laws. Accordingly, the cooperative approach in Canada's proactive equity laws are also consistent with its NAFTA and NAALC obligations.

While employers and governments often speak of the importance of labour being cooperative and not adversarial and seeing themselves in partnership with the employer, some forget the importance of ensuring such a partnership when it comes to identifying and eliminating discrimination. Co-management or co-operation with the bargaining agent is often inconsistent with the Canadian style of management which is still struggling with a top-down decision-making process rather than a collaborative industrial relations system.

The private enterprise model of North America still seems rooted in competition and conflict where an imbalance of power in favour of the employer is seen as essential. Industrial democracy and equality have often been seen as incompatible with such a model.

On the other hand, some more sophisticated Canadian employers see that sharing power with their employees and/or their representatives pays off in terms of higher productivity, better quality of work, and larger profits in the end. Giving workers more freedom, responsibility, and "equity" leads to more productive and energetic workers dedicated to the advancement of the enterprise's interests. They see that in those circumstances, global competitiveness cannot be far behind.

These same employers lobbied the Ontario government not to repeal the Employment Equity Act, 1993 because having a diverse workforce made sense when their customer base in Canada and worldwide was diverse.

XIII. CONCLUSION

The issue with Canada's equity laws is not so much whether they

²⁸ See also Beijing Declaration Report of the Fourth World U.N. Conference on Women, *supra* note 9; Article 178, where signatory governments, including Canada recognized "collective bargaining as a right and as an important mechanism for eliminating wage inequality for women. . . ."

are successful, but whether their success or anticipated success will be or has been the source of their demise or has been limiting. For example, to the extent that pay equity laws are effective in increasing the compensation of "women's work" to comparable "men's work," it is at the same time increasing the labour costs of employers. Seen in isolation, this can put such laws in direct conflict with the deficit-cutting agendas of certain conservative governments and the cost-cutting drive of certain businesses. On the other hand, given that, for example, women and racial minorities are the workforce of the future, integration of those workers into the economy is essential for economic prosperity.

The challenge will be to harness the equity agenda so that disadvantaged groups will be given access to economic justice and governments and businesses will reap the benefits of a diverse workforce.

